

TEACHERS' RETIREMENT BOARD MEETING November 18, 2005

CALL TO ORDER:

Chairman Scott Dubbs called the meeting to order at 8:30 a.m., in the Teachers' Retirement Conference Room, 1500 East Sixth Avenue, Helena, Montana.

BOARD MEMBERS PRESENT:

Chairman, Scott Dubbs
Mona Bilden
Tim Ryan
Kari Peiffer
James Turcotte
Darrell Layman

STAFF PRESENT:

David L. Senn, Executive Director
Tammy Rau, Deputy Executive Director
Alison Peterson, Executive Secretary
Johnelle Sedlock, Benefits Officer
Karla Scharf, Retired Payroll Supervisor
Ali Bovingdon, Legal Counsel
Dan Gaughan, Accounting/Fiscal Manager
Janet Cooper, Benefits Officer

OTHERS PRESENT:

Mark Bruno, Governor's Budget Officer
Kathy Bramer, OPI
Tom Bilodeau, MEA-MFT
Nona Kendall, Teacher
David Paoli, Attorney for Don Read

CALL TO ORDER:

Adopt Agenda - Chairman Dubbs called for additions or changes to the Agenda for November 18, 2005. Seeing none, Chairman Dubbs requested a motion to adopt the Agenda.

MOTION/VOTE Mr. Jim Turcotte moved that the agenda be approved. Seconded by Mr. Darrell Laymen, the motion carried unanimously.

Approval of September 23, 2005 Minutes - Chairman Dubbs called for a motion to approve the May 20, 2005, Board meeting minutes.

MOTION/VOTE Mr. Turcotte moved that the September 23, 2005 minutes be adopted. Seconded by Mrs. Mona Bilden, the motion carried unanimously.

EXECUTIVE DIRECTOR'S REPORT:

July 1, 2005 Actuarial Valuation - Mr. David Senn reported on the actuarial valuation prepared by Mr. Mark Olleman of Milliman Consultants and Actuaries. The information provided shows that the system is currently not actuarially sound, because the contributions do not amortize the unfunded accrued liabilities over a reasonable period (30 years). Employer contribution rates would need to be increased by 4.06% by July 1, 2006 to amortize the current unfunded liabilities over 30 years.

Illustration of Funding Stressors' and Their Costs - Mr. Senn reported on the letter that was presented to the interim committee from Mark Olleman illustrating the costs of early retirement incentives, work after retirement, and the impact of salary spiking on the retirement system.

Executive Summary - Mr. Senn reported that the Legislative Auditor completed the 2005 financial audit of the Montana Teachers' Retirement System. The Auditor found the system is not actuarially funded as required by board policy and the Montana Constitution. Their report includes one recommendation that legislation be enacted to provide actuarial funding for TRS. The Board will conditionally concur with this recommendation; because the Board does not have authority to pass legislation.

Mr. Senn reported on meeting with the Office of Public Instruction that he and Bill Hallinan attended regarding the need for collecting data on faculty and staff, including, salary information, employment status, teaching assignments, and professional development needs. OPI and TRS recently compared records and found discrepancies in employment records, such as, working retirees that are not being reported to TRS and employees reported to TRS and not OPI.

LEGISLATIVE PROPOSALS IN ANTICIPATION OF SPECIAL SESSION:

State Administration and Veterans' Affairs Interim Committee Funding Proposal (SAVA): Mr. Senn reported on LC2005-3. The TRS Board was concerned that bill draft LC2005-3, may not provide for a 30 year amortization period of the UAAL because the supplemental rate of 3.45% would sunset when the current employer rate of 7.47% could amortize the remaining UAAL over 30 years, resulting in an amortization period greater than 30 years. The Board also had concerns on the wording for post-retirement employment limitations-cancellation and recalculation, and with the proposed wording to reflect taxable and non-taxable fringe benefits, and taxable value of health insurance.

MOTION/VOTE Mr. Turcotte moved that the definition of compensation earnable after retirement include the value of all annuities and car allowances, and that Mr. Senn work with the interim committee to address the supplemental contribution rate sunset and amortization period issues.. Mr. Tim Ryan seconded the motion and it carried unanimously.

PUBLIC COMMENT: Chairman Dubbs called for public comment. Kathy Bramer, personnel director of OPI stated appreciation to Mr. Senn and the Board for explaining the funding issues and addressing the need for legislation to close the loopholes in the retirement system. Tom Bilodeau addressed the issues on retirement being discussed by the Quality Schools Interim Committee and Mill Levies proposed in different counties. Mr. Bilodeau commented on the possibility of change from a county based Mill Levy to a state wide Mill Levy.

INDIVIDUAL MEMBER PETITIONS:

Nona J. Kendall-Average Final Compensation: Ms. Nona Kendall appealed to the Board the calculation of her Average Final Compensation. Ms. Kendall retired effective July 1, 2005. During the 2002-03 school year Ms. Kendall was on a one year leave and during that year substitute taught 4 days. As a substitute, Ms. Kendall earned \$65 a day for total wages of \$260. Those wages were annualized to determine her salary for the 2002-03 school year.

Ms. Kendall requested the Board use her 2001-02, 2003-04, and 2004-05 salaries to calculate her average final compensation and refund contributions from her 4 days of service. Ms. Kendall stated that she was unaware that helping out her school by teaching 4 days would have any impact on her retirement benefits.

Mr. Senn called to the Board's attention the difference between the rate of pay Ms. Kendall received as a substitute teacher and her daily rate of pay as a teacher. If she would have been paid the hourly or daily rate that she was as a full-time teacher we wouldn't be here today.

Mr. Ryan stated there is absolutely no question in my mind that no rational person would have taught 4 days knowing what the impact would be on his or her retirement. This is not a case where someone is trying to circumvent the law for their personal gain. I think honest people made decisions without recognizing what the consequences were. It also occurs to me that if you look at the contributions made by her and her employer, the benefit she is asking for has probably been actuarially funded so that there is not a negative impact on the System.

Mr. Senn asked Ms. Bovingdon address what precedent this would set if the Board were to grant an exception. Ms. Bovingdon replied: Courts do have certain powers of equity. It is possible if a court was to look at Ms. Kendall's case, it could find application of the statute to render such an unfair decision, that it would find an exception should be made. As far as establishing precedent I think you would want to be sure that whatever motion is made that it reflects that this decision is solely based on the facts that were presented in Ms. Kendall's case. That this is a one time exception that you are granting and that it is not any broader than that. That any other petitioners coming before you granting them an exception would have to be evaluated based on the facts that they present and the law. Also, I think it would also be important that the contributions be refunded to the employer.

Mr. Ryan said he believed this was an unintended consequence and is a unique situation. If informed of the consequence of substitute teaching, a rational person would have chosen not to have taught those four days.

MOTION/VOTE: Mr. Ryan moved that because Ms. Kendall was unaware of the consequence of her substitute service, we accept her proposal to calculate her average final compensation using the salaries reported for fiscal years, 2001-02, 2003-04, and 2004-05, and return to the district the contributions reported during the 2002-03 school year, provided she return to the district the wages she received for the substitute teaching service. Seconded by Mrs. Bilden. The motion carried with 5 members voting aye and one member voting nay.

Donald Read-Average Final Compensation: Mr. Read appealed to the Board the calculation of his Average Final Compensation; legal counsel, David R. Paoli, represented Mr. Read. Mr. Read requests the Board recalculate his average final compensation based upon his 1994-95, 1995-96, and 2004-05 salaries.

Mr. Read worked for U of M-Missoula for ten years as head football coach and retired in 1996. He was rehired to a full-time position in June 2004 as U of M- Missoula Athletic Director and worked in that position for 13 months, until July 1, 2005. When Mr. Read's benefit was recalculated TRS used an additional 1.11 years of service he earned between June 1, 2004 and July 1, 2005, which increased his retirement benefit.

Mr. Paoli said when you calculate AFC, clearly from Mr. Gannon's letter and from the President's letter; nobody envisioned that when you talk about 3 consecutive years of full-time service, a month in June 2004, would disqualify you from using his 2004-05 year to calculate his AFC. My plea is for fundamental fairness. Our argument is that Mr. Read has 3 full-time consecutive years of service being the 1994-95, 1995-96, and 2004-05.

Chairman Dubbs asked Mr. Senn about the detriment to the system. Mr. Senn replied if you look at what they are saying are 3 full consecutive years, you could pick any 3 full years reported to TRS. That is not what the legislature intended and that would not be actuarially sound. The law does not say the 3 highest earning years it says 3 consecutive years of full-time service.

Mr. Paoli said I don't think we're asking to pluck years out of any kind of sequence, in my view what we're asking for these are 3 full consecutive years.

Mr. Turcotte said his concerns with this are not the fact that contributions were paid on the salaries earned, but recalculating average final compensation and guaranteeing a benefit for the rest of a person's life that increases by \$208.00 per month when the System collected only \$2,400.00, seems out of the realm of reasonableness in his view.

MOTION/VOTE: Mr. Turcotte motioned to deny the petition. Mr. Laymen seconded the motion. The motion was failed with 2 members voting aye, and 4 voting nay.

Discussion:

Mr. Senn said the statutory language clearly states the Board must use the three consecutive years of full-time service that yield the highest average. Mr. Gannon's letter of October 5, 2005 stated that using the TRS definitions of full-time and part-time that the University would view Mr. Read's service credit in fiscal year 2003-04 to be part-time.

Mr. Turcotte said I don't think Mr. Read's service and work ethic are being questioned. His position is that the benefit is being calculated based upon the law, and it is unfortunate but he was called back to work and he was paid for that work. I don't believe retirement benefits and coming back to work from a retired position necessarily equate to increasing those benefits beyond what the law allows.

Chairman Dubbs said he agreed, we need to make sure whatever decision we make does not hamstring staff's ability in the future to be able to deal with these issues. In this individual situation he doesn't think Mr. Read or the University was attempting to manipulate retirement. So in that regard he would have to speak against this motion, but would like to request, Counsel's comments.

Ms. Bovingdon said in both Ms. Kendall's and in this case staff appropriately read and applied the law and that is what staff needs to continue to do. That is the role and function of staff to read the plain language of the law and to apply it. There may be certain equity issues in this case, as well it does not appear to be an instance of someone trying to get around the law to provide themselves a greater benefit. It may simply be a matter of someone not understanding the law and not understanding how their decision to start work in June 2004 instead of July 2004 would impact the calculation of AFC. However, it is factually distinguishable from the previous case. As far as precedent goes you need to make very clear when deciding to grant an exception to the strict reading of a statute and how staff has applied the law the factual basis for granting such an exception.

Mrs. Bilden asked how many calls or inquiries does TRS receive from others considering going back.

Ms. Karla Scharf stated had he called, or if the University would have called, we would have told them of the ramifications.

MOTION: Mrs. Kari Peiffer motioned to approve Mr. Reads request to have his 1995, 1996, and 2005 wages used to calculate his final salaries, and not to use this as precedent but as an individual case. Mr. Ryan seconded the motion.

Discussion:

Mr. Laymen asked: other than retirement benefit did Mr. Read suffer any negative consequences as a result of returning? Mr. Turcotte had mentioned he did return he was paid \$108,000 for that year of service and his benefits were cancelled, so he was not affected negatively on this was he? Everyone is talking fairness, did he suffer a loss as a result of returning to work.

Mr. Paoli responded that Mr. Read is suffering a loss because consideration is not given for that salary when he did return to work, but he did get paid \$108,000. He wasn't penalized or anything.

Mr. Laymen asked: did he come out at the end of the day in a negative amount because he returned to work?

Paoli replied that he believes he is, as a result of the 2004-05 salary not being included in his 3 highest consecutive years.

Mr. Layman responded that both beliefs are based on the fact that he's not receiving the additional \$208 in increased retirement benefits.

Mr. Turcotte stated Mr. Read did receive a \$92 increase as a result of returning to work, but not a \$208 increase.

Mr. Paoli responded he's getting the \$92 as a result of the additional service credit but there still is a gap there because his 2004-05 salary still isn't being considered.

Mr. Layman commented his understanding the reason you hire a staff is to adjudicate the rules and policies we have. Similar to the earlier case, it was commented that the Board's decision was not going to be precedent but that only lasted a minute and it was already quoted as precedent in the sense of fairness. Staff also mentioned had a call been made they would have explained exactly what would happen under each circumstance. I can't believe I'm the only person that knows you can call.

Mr. Paoli responded that the Board can view cases on an individual fact basis and that you can limit your decisions to the facts of that decision so therefore they are not going to bind you necessarily in the future. The concept of fairness will run throughout all of these appeals it will never go away, and to the extent that fairness is precedent it's part of your Board. Could Mr. Read have called, I think he could, and I appreciate the comments that the TRS gets calls all the time. I think the teachers call because they have union representation.

Mr. Paoli I am relying on the facts and circumstances of this case. These are isolated individualized facts that call out for fairness. With that I would appreciate your consideration.

Mrs. Bilden said I think you can see how hard we are trying to do the right thing. In listening to everything I need to change my position. I agree he is getting an increased benefit for the additional service and that he did get paid for his services. Maybe he had the responsibility, or the University had the responsibility to make a phone call. I'm changing my position on this.

VOTE: The motion failed with 2 members voting aye, and 4 voting nay.

Robert Frazier-10% Cap Reconsideration: Mr. Frazier asks the Board to reconsider their decision to deny his request for an exemption to the 10% cap, §19-20-715, MCA. Mr. Frazier contends that the legislature never contemplated the impact of the cap on someone working two jobs, for the same employer, in two different locations. Mr. Senn reviewed the facts of Mr. Frazier's appeal. Effective October 29, 2004, Mr. Frazier' contract for the 2004-05 school year was increased from \$74,100 to \$100,880 to compensate for the assignment as Dean of the College of Technology, Helena. This assignment was in addition to his position as University Executive Vice President and Executive Assistant to the President on the Missoula campus. As a result of this assignment, during the 2004-05 fiscal year, Mr. Frazier held two executive level positions in two different locations.

The Board discussed the statement of intent included in the 10% cap legislation stating it was the intent of the legislature to provide equitable retirement benefits to all members of the Teachers' Retirement System based on their normal service and salary and to limit the effect on the retirement system of isolated increases received by selected individuals through promotions or one time salary enhancements during their last years of employment.

MOTION/VOTE: Mr. Ryan moved to affirm the Board's earlier decision to deny Mr. Frazier's request for an exemption to the 10% cap. Seconded by Mr. Turcotte. The motion carried unanimously.

LEGAL COUNSEL REPORT:

Legal Counsel, Ali Bovingdon, reported on the following cases.

Merle Ferrier case: Ms. Bovingdon reported on the resolution of the case in which the Board prevailed in its appeal to the Supreme Court. The Supreme Court remitted the case to the District Court. Ms. Bovingdon suggested filing a motion for judgment of merits with the District Court. Ms. Bovingdon advised the Board that Mr. Ferrier has requested to be placed on the Board agenda, and recommended we contact Mr. Ferrier to see if he is represented by legal counsel before staff engages in any discussions regarding settlement or any other issue.

Roger Ogren Case: Ms. Bovingdon updated the Board on the embezzlement case involving Mr. Ogren. Mr. Ogren was charged with felony theft in October for cashing his deceased mother's TRS benefit checks. At the time of his arrest he was working for the Lincoln School District as a counselor. Mr. Ogren will be represented by local attorney, Jim Obey. Lewis and Clark County Attorney Leo Gallagher will be prosecuting the case. Mr. Ogren filed chapter 7 bankruptcy on September 9, 2005 prior to his arrest. The account in which the TRS benefit checks were being

deposited into a bank account in Red Lodge, MT. has since been closed. The checks were withdrawn immediately after deposited to pay off debts.

OTHER BUSINESS:

2006 Meeting Dates - Mr. Senn asked that the Board approve the next meeting date of February 17, 2006, May 12, 2006, September 8, 2006, and November 17, 2006. Due to a scheduling conflict Mrs. Bilden asked that the February 17th meeting be moved to February 10, 2006.

MOTION/VOTE: Mr. Ryan moved to adopt the 2006 Board meeting dates. Mr. Laymen seconded the motion and the motion carried unanimously.

Out-of-State Travel Requests - Mr. Bill Hallinan requests a travel approval for the Public Retirement Information Systems Management (PRISM) annual conference being held April 23 through April 26, 2006, in San Francisco, CA.

MOTION/VOTE: Mr. Laymen moved to approve the request. The motioned was seconded by Mrs. Peiffer, and carried unanimously.

Alternative Pay Plan - Mrs. Tammy Rau reported on the Lump Sum Performance Policy. The policy has been updated from a lump sum cash award to a de minimis award due to tax consequences. The State Personnel Division has been sent a copy of the policy for review. State Personnel informed TRS that a de minimis benefit is limited to \$50.00. Mr. Senn has requested documentation of this limit. Given the questions raised by the Personnel Division, the policy will be further reviewed for compliance with state and federal regulations, and changed to require staff to provide quarterly documentation of performance.

MOTION/VOTE: Mr. Turcotte motioned to table the alternative pay plan. Mrs. Bilden seconded the motion, the motion carried unanimously.

Personnel Committee Report - Chairman Dubbs and Mrs. Bilden met with Kristin Jacobson on November 17, 2005 for Mr. Senn's performance appraisal. Staff and Board participation was outstanding to requests for input and comments. Mr. Senn's rating scales were outstanding on his job performance. The Board will work with Mr. Senn on setting goals and objectives for the future. Mr. Senn will submit recommendations to the Board for review at the next Board meeting in February.

Board of Investments Report - Mr. Turcotte stated that a report was given to the legislative SAVA committee that compared investments with actuarial numbers that was prepared by Carol South. The current benchmark has been the interest assumption on valuations, which has nothing to do with the performance of the funds. The Board of investments will be requesting two asset liability models to assist with properly allocating assets.

Financial Statements, Delinquent Agency, Travel and Budget Reports - Mr. Dan Gaughan presented the financial statements, budget and delinquent agency reports. The TRS is currently within the budget range. The work done by Milliman for legislation and bill drafts are not shown in the budget and may require a budget amendment. Mr. Gaughan reported that he has been in

contact with the schools that have delinquent accounts with TRS and all should be current within two weeks.

Travel Report - Benefit Officers Janet Cooper and Johnelle Sedlock are speaking around the state at the MEA/MFT pre-retirement workshops. Tammy Rau will be speaking at the workshop in Bozeman. Mr. Senn attended the Annual Retired Teachers' conference and the MCEL conference held in October. Mr. Senn recommended we hold a future Board meeting combined with a retirement seminar presentation.

Annual Per Diem Election Reports - Mr. Senn informed the Board of the forms required if a Board member were to receive overlapping per diem from being in a Board position and a public employee position.

RETIREMENT REPORT:

Regular, Survivorship, & Adjustments The Board reviewed the Regular, Survivorship, and Adjustment Report.

DISABILITY APPLICATIONS:

Executive Session to Discuss Disability Applications & Annual Reviews:

The Chair directed the meeting closed at 2:55 p.m. to review disability applications since the individual's right to privacy of information pertaining to disability benefits clearly exceeds the merits of public disclosure.

Disability Retirement Applications – The meeting was reopened to the public at 3:00 p.m.

MOTION/VOTE Mr. Ryan moved that the disability application of Mrs. Mary J. Blakeslee be approved. Seconded by Mr. Laymen, the motion carried unanimously.

MOTION/VOTE Mrs. Bilden moved that the disability application of Mrs. Patricia S. McAfee be approved. Seconded by Mrs. Peiffer, the motion carried unanimously.

ADJOURNMENT:

There being no further business, the meeting was adjourned at 3:33 pm.

Chair_____

Executive Director_____